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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 64

CLYDE HYSLER,

Petitioner,

vs.

THE STATE OF FLORIDA.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA AND BRIEF IN SUPPORT THEREOF.

CARLTON C. ARNOW,
P. GUY CREWS,
Counsel for Petitioner.

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THE STATE OF FLORIDA.

PETITION TO THE SUPREME COURT OF THE UNITED STATES FOR A WRIT OF CERTIORARI.

To the Honorable the Supreme Court of the United States:

Your petitioner, Clyde Hysler, respectfully shows:

A.

Summary Statement of the Matter Involved.

(1) Present status of the Case.

Petitioner, Clyde Hysler, is now confined in the State Penitentiary in the State of Florida under sentence of death for murder; petitioner is charged with, and convicted for the murder of one Mayme Elizabeth Surrency, a white woman, in November, 1936; jointly indicted with the peti-

tioner Clyde Hysler, were two young, destitute and ignorant negroes, James Baker and Alvin Tyler (R. 1-3), who, several days after their arrest, implicated this petitioner in the death of the said Mayme Elizabeth Surrency, and who testified against this petitioner at the trial in the Circuit Court of Duval County, Florida, wherein this petitioner was convicted and sentenced to die; the testimony of the said James Baker and Alvin Tyler being the only testimony to connect this petitioner with said murder (Tyler's testimony, Trial Record 1027 to 1170; Baker's testimony, Trial Record 1176 to 1327).

A severance was granted as to Alvin Tyler and James Baker (Trial Record 726 to 730) and the petitioner was placed on trial on the second count of the indictment (Trial Record 733), which charged Alvin Tyler with the commission of the murder of Mayme Elizabeth Surrency and the petitioner and James Baker with being a principal in the first degree.

Judgment and sentence of death was imposed on the petitioner on the 23rd day of April, A. D. 1937 (Trial Record 144 to 146).

This Petitioner sued out a writ of error to the Supreme Court of Florida, which on the 3rd day of February, A. D. 1938, affirmed the judgment and sentence of the Circuit Court of Duval County (see *Hysler* v. *State*, 181 So. 354).

The negro, James Baker, was not tried until December 6, 1937 (R. 13), which was subsequent to the conviction of this petitioner for said murder. The said James Baker was tried and convicted for the murder of John H. Surrency, who was killed in the same attempted robbery in which the said Mayme Elizabeth Surrency was killed, and James Baker was sentenced to death, his conviction being based on the testimony given at the trial of this petitioner, the said James Baker being tried long after the conviction of this petitioner. Thereafter, the said James Baker sued out a Writ of Error

to the Supreme Court of Florida, which court on March 14th, 1939, affirmed the judgment and sentence of the Circuit Court of Duval County, Florida.

(See *Baker* v. *State*, 188 So. 634).

On the 7th day of April, 1941, the said James Baker repudiated his testimony given at the trial of this petitioner, and on the 8th and 9th days of April, 1941, explained that he had falsely testified against this petitioner on the promise of the prosecuting officers that they would see that he escaped the death penalty and be sentenced to life imprisonment, and that he would only have to serve three years on a sentence of life imprisonment, when said prosecuting officers would obtain a pardon for him; and further explained that he implicated this petitioner in said crime because of threats and beatings administered to him by the law enforcement officers, and the promise of immunity from the electric chair, and the further promise of a pardon or parole after he had served three years in the State Penitentiary by John W. Harrell, State's Attorney for the Fourth Judicial Circuit of Florida in and for Duval County, Florida, if he, the said James Baker, would testify in behalf of the State of Florida and implicate petitioner in the murder of the deceased, Mayme Elizabeth Surrency; and that the other co-defendant of petitioner, to-wit: Alvin Tyler, also gave his testimony in behalf of the State of Florida against the petitioner under the same circumstances as the testimony given at the trial of petitioner by the witness and co-defendant, James Baker. On the 10th day of April, 1941 (R. 1), this petitioner applied to the Supreme Court of Florida for leave to file an application for Writ of Error *Coram Nobis* before the Circuit Court of Duval County, Florida, which motion was denied on the 11th day of April, 1941 (R. 27). That as shown by the motion of this petitioner filed in the Supreme Court of Florida, for leave to file Petition for

Writ of Error *Coram Nobis*, the said James Baker completely exonerated this petitioner of the crime for which he stands convicted and sentenced to die, and implicated another man named Joe Peterson in said crime (see affidavits, R. 6-16); that the said James Baker and Alvin Tyler gave their testimony implicating this petitioner in said crime because of duress, coercion and hope of reward coming from the prosecuting officer and law enforcement officers of Duval County, Florida. It is claimed and charged in the petition filed in the Supreme Court of Florida (R. 3-4) that the obtaining of false testimony against the petitioner in such a manner deprived the petitioner of the equal protection of the law as guaranteed to him under the 14th Amendment to the United States Constitution.

That the ancient Writ of Error *Coram Nobis* being a common law Writ, and the State of Florida being a common law State following the common law except where modified by statute, and the Supreme Court of Florida having affirmed the judgment of the Circuit Court of Duval County, Florida, against petitioner, and said judgment then becoming the judgment of the said Supreme Court of Florida, it was proper and mandatory that petitioner first apply to the Supreme Court of Florida for permission to file his petition before the Circuit Court of Duval County for Writ of Error *Coram Nobis* (see *Lamb* v. *State*, 107 So. 535, 91 Fla. 396); and that by reason of the Supreme Court of Florida denying petitioner's application for leave and permission to file a petition for Writ of Error *Coram Nobis* before the Circuit Court of Duval County, Florida, petitioner was precluded from filing his said Petition for Writ of Error *Coram Nobis* before the Circuit Court of Duval County, Florida; that this petitioner's conviction for murder, for which he stands convicted and sentenced to die, is based on the false testimony of the said James Baker and Alvin Tyler; that the testimony was extorted by violence and

torture by agents and officers of the State of Florida while acting in their official capacities, and by the hope of reward extended to said witness by agents and officers of the State of Florida. That on the 12th day of April, 1941 (R. 27), this petitioner applied to the Supreme Court of Florida for a rehearing on his motion for leave to apply to the Circuit Court of Duval County, Florida, for a Writ of Error *Coram Nobis*, which application was denied on the 12th day of April, 1941 (R. 28); immediately thereafter, on the 12th day of April, 1941, petitioner filed his motion before the Supreme Court of the State of Florida for a stay of execution, in order that petitioner might have time to apply to the Supreme Court of the United States for Writ of Certiorari, which motion was denied by the Supreme Court of the State of Florida on the 12th day of April, A. D. 1941 (R. 30). It is admitted by the State of Florida that the facts stated in the motion for leave to apply in the Circuit Court of Duval County, Florida, for Writ of Error *Coram Nobis* are true, because the State of Florida did not deny the same, and offered no objection to the granting of said motion. A mere reading of the motion of this petitioner, filed in the Supreme Court of Florida, for leave to apply to the Circuit Court of Duval County, Florida, for Writ of Error *Coram Nobis*, shows that this petitioner was denied the constitutional rights guaranteed him under the 14th Amendment of the Constitution of the United States.

The Supreme Court of Florida entered an opinion on the order denying the petition for rehearing (R. 31-32).

B.

Reasons Relied On for the Allowance of the Writ of Certiorari.

(1) The conviction of petitioner, upon false testimony extorted by violence and torture obtained by agents and officers of the State of Florida while acting in their official

capacities, and obtained by the hope of reward from the agents and officers of the State of Florida while acting in their official capacities, is a denial of the equal protection and due process of the law guaranteed by the 14th Amendment to the Constitution of the United States.

The above questions were seasonably and properly raised in the Supreme Court of the State of Florida, which Court denied the Federal question involved. Petitioner has exhausted his remedy in the State Courts of the State of Florida.

In support of the foregoing grounds of application, your petitioner submits the accompanying brief, setting forth in detail the precise facts and arguments applicable there. Petitioner further states that this application is not filed for the purposes of delay.

Wherefore your petitioner prays that this Court, pursuant to United States Judicial Code, Section 237b, as amended by Act of February 13th, 1925, 43 Stat. 937, issue a Writ of Certiorari to review the Judgment of the Supreme Court of the State of Florida denying the petitioner leave to apply to the Circuit Court of Duval County, Florida for Writ of Error *Coram Nobis*.

All of which is respectfully submitted this 29th day of April, A. D. 1941.

CLYDE HYSLER, *in Proper Person,*
Florida State Prison Farm,
Raiford, Florida,
Petitioner.

By CARLTON C. ARNOW,
203 *Realty Building,*
Jacksonville, Florida,

By P. GUY CREWS,
203 *Realty Building,*
Jacksonville, Florida,
Attorneys for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 64

CLYDE HYSLER,

Petitioner,

vs.

THE STATE OF FLORIDA.

BRIEF IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI.

I.

Opinion of the Supreme Court of Florida.

The opinion of the Supreme Court of the State of Florida has not been officially reported. A certified copy thereof is found in the record of the Transcript of record of application for leave to file petition for Writ of Error *Coram Nobis* in the Circuit Court of Duval County, Florida (R. 31). A motion for rehearing was denied in an order appearing in the same record (R. 28-29).

II.

1.

Jurisdiction.

The statutory provision is United States Judicial Code, Section 237b, as amended February 13th, 1925, 43 Stat. 937.

2.

The date of judgment is April 11th, 1941, on which date the Supreme Court of the State of Florida denied the motion of the petitioner for leave to apply to the Circuit Court of Duval County, Florida, for a Writ of Error *Coram Nobis* (R. 27). A petition for rehearing was filed and denied on April 12th, 1941 (R. 28).

3.

That the nature of the case and the rulings below bring the case within the jurisdictional provisions of Section 237b, *supra*, appears from the following:

A.

The petitioner herein specifically raised a Federal question as a ground of his motion for leave to apply to the Circuit Court of Duval County, Florida for a Writ of Error *Coram Nobis*, which was denied by respondent. Where conviction and sentence of death rests solely upon false testimony shown to have been extorted from prisoners, and by the hope of reward to such witnesses, who were co-defendants and witnesses against the petitioner, by the officers having them in charge, such acts violate the 14th Amendment to the Constitution of the United States in that it denies the petitioner his rights thereunder.

That he was denied due process of the law and the protection of law, and the equal protection of law by the Supreme Court of the State of Florida guaranteed by the 14th Amendment to the Constitution of the United States in that;

(a) That he was not given a fair, impartial and deliberate trial;

(b) That conviction of petitioner rests solely upon false testimony obtained by force and duress and the hope of reward, and as such was not admissible;

4.

The following cases, among others, sustain the jurisdiction of the Court:

Strauder v. *W. Va.*, 100 U. S. 303; *Neal* v. *Delaware*, 103 U. S. 370; and *Brown* v. *Mississippi*, 297 U. S. 278, all of which are authority for the view that the duty of maintaining constitutional rights of a person on trial for his life transcends mere rules of procedure. In *Brown* v. *Mississippi*, *supra*, it was held that where confessions were obtained by coercion, brutality and violence and were used as a basis for convictions and sentences, such constituted a denial of due process. In *Chambers* v. *State of Florida*, 309 U. S. 227, it was held that where a person's conviction rested upon testimony of three witnesses, co-defendants who testified because of duress and coercion by the officers of the State of Florida, the use of such testimony was a denial of due process.

5.

Statement of the Case.

Mayme Elizabeth Surrency and John H. Surrency were murdered in Jacksonville, Florida, the day before Thanksgiving in November of 1936, in an attempted robbery of the said John H. Surrency. In December of 1936 the petitioner, Clyde Hysler, was jointly indicted with James Baker and Alvin Tyler in two indictments, one charging them with the murder of John H. Surrency and the other charging them with the murder of Mayme Elizabeth Surrency; a severance was requested by the State's Attorney; and petitioner was tried and convicted for the murder of Mayme Elizabeth Surrency on the 5th day of April, 1937, and sentenced to die. At the trial of petitioner, the only testimony to connect this petitioner with said crime was the testimony of James Baker and Alvin Tyler, each of whom testified that this peti-

tioner had planned the robbery in which John H. Surrency and Mayme Elizabeth Surrency were killed; and it was solely upon the testimony of James Baker and Alvin Tyler that petitioner was convicted; petitioner appealed to the Supreme Court of Florida, which affirmed his conviction on the 3rd day of February, 1938 (181 So. 354). The execution of petitioner was set for the week beginning April the 14th, 1941. The witness James Baker sent for the attorney for this petitioner on the 7th day of April, 1941, and on the 7th, 8th, and 9th days of April, 1941 (R. 6, 14, 21), completely repudiated his testimony implicating the petitioner in the murder of Mayme Elizabeth Surrency, and stated that Joe Peterson was the person who planned the robbery resulting in the death of Mayme Elizabeth Surrency, and that he and Alvin Tyler both falsely testified against this petitioner because of beatings administered to them by the law enforcement officers of Duval County, Florida, and the promises made them, that if they would testify against petitioner and implicate him in said crime that they would see that these witnesses escaped the death penalty. Based on the affidavits of said James Baker, on the 10th day of April, 1941, petitioner applied to the Supreme Court of Florida for leave to apply to the Circuit Court of Duval County, Florida, for a Writ of Error *Coram Nobis*, which was denied on the 11th day of April, 1941; the petitioner filed, on the 12th day of April, 1941, petition for rehearing and motion for stay order for time within which to petition the Supreme Court of the United States for a Writ of Certiorari; this petition for Certiorari is based upon the said order of the Supreme Court of Florida denying motion for leave to file petition for Writ of Error *Coram Nobis* in the Circuit Court of Duval County, Florida, and its denial of a rehearing. The Supreme Court of Florida wrote an opinion thereon, Chief Justice Brown dissenting (R. 31-32).

In its opinion the Supreme Court of Florida inadvertently made a mistake in the reasons given as to why it would not grant the petitioner leave to file his petition for Writ of Error *Coram Nobis*. These reasons are as follows (R. 31-32):

"(a) This Court may take judicial cognizance of its own records and the record lodged in this Court on the writ of error to the judgment of conviction of the petitioner shows ample evidence to support the judgment of conviction without the aid of the testimony given on that trial by the witness James Baker.

(b) Writ of error coram nobis will not lie because of false testimony given at the trial by important witness. Lamb *v.* State, 91 Fla. 396, 107 So. 535.

(c) Matters properly presentable for writ of error coram nobis are such as would have prevented conviction and not such as may have caused a different result. Chesser *v.* State, 92 Fla. 754, 109 So. 906.

(d) If witness Baker swore falsely at defendant's trial, that fact was known to petitioner at the time of the trial. Washington *v.* State, 95 Fla. 289, 116 So. 470; Pike *v.* State, 103 Fla. 594, 139 So. 196.

(e) The allegations of the petition do not show that the prosecuting attorney had any guilty knowledge of the alleged maltreatment of the witness, or that the alleged falsity of the testimony of the witness Baker was known to the prosecuting officer.

(f) The petition does not show that any alleged maltreatment of witness was inflicted by any officer of the trial court or that same was known to any officer of the trial court.

(g) The records of this Court, of which we take judicial cognizance, show that petitioner was convicted on trial held subsequent to the trial and conviction of the witness Baker of the offense of Murder in the first degree without recommendation to mercy, and that both

trials were conducted on behalf of each defendant by able, diligent and faithful counsel.

(h) If all petitioner alleges in his petition had been true and had been fully made known to the trial court and to the jury which tried the defendant-petitioner, it would not have precluded the entry of the judgment upon a verdict of guilty of Murder in the first degree having been returned by the jury.

So it is, the petition is insufficient to require us to grant same and for such reasons the same was denied and the petition for rehearing is likewise denied."

We point out these facts in regard to the court's reasons.

Ground (a). The petition sets out that both *James Baker* and *Alvin Tyler* testified falsely because of duress and force and the hope of reward and their testimony is the only testimony to connect the petitioner with the crime.

Ground (b). The petitioner does not merely rely on the fact that these witnesses testified falsely but in addition charge that the false testimony was obtained by force and duress and the hope of reward coming from the law enforcement officers and the prosecuting officers. The case of *Lamb* v. *State*, 91 Fla. 396, 107 So. 535, is not in point on the question of the force and duress and the hope of reward. The case of *Chambers, et al.*, v. *State of Florida*, 309 U. S. 227, 60 St. Ct. 472, holds that evidence used against an accused obtained by threats of violence invades the rights guaranteed under the 14th Amendment to the United States Constitution.

The *Chambers* case, *supra*, was the outgrowth of the following cases in the Florida Supreme Court:

1. *Chambers, et al.*, v. *State*, 111 Fla. 707, 151 So. 499, 152 So. 437;
2. *Chambers, et al.*, v. *State*, 113 Fla. 786, 152 So. 437;
3. *Chambers, et al.*, v. *State*, 117 Fla. 642, 158 So. 153;

4. *Chambers, et al.*, v. *State*, 123 Fla. 734, 167 So. 697;
5. *Chambers, et al.*, v. *State*, 136 Fla. 568, 187 So. 156.

In the second *Chambers* case, *supra*, the Supreme Court of Florida granted leave to the petitioner to file a petition for Writ of Error *Coram Nobis* in the lower court. Chambers was convicted after trial was had in which his three co-defendants, who had plead guilty, *testified against him.* The United States Supreme Court in the case of *Chambers, et al.*, v. *State of Florida, supra*, found the following facts:

Text-U. S. 225, St. Ct. 476.

"* * *. When Chambers was tried, his conviction rested upon his confession and the testimony of the other three confessors".

In the case at bar the conviction of the petition rests on the testimony of the other two co-defendants *who were confessors.* We say then that if Chambers was entitled to file a petition for Writ of Error *Coram Nobis* that the petitioner herein was and is likewise entitled to be permitted to file a petition for Writ of Error *Coram Nobis.* Therefore there can be no escape from the fact that either false confessions or *false testimony* obtained by force and duress cannot be used against an accused and if it is used it invades the protection guaranteed to him by the 14th Amendment of the United States Constitution.

The Supreme Court of Florida has held in the case of *Deiterle* v. *State*, 98 Fla. 739, 124 So. 47:

"* * * There is some evidence in the record that it was represented to the accused that he had better make good with the State Attorney by telling the truth and that the State Attorney *was his friend.* This latter statement is not clearly shown to have been made, but it is clearly shown that, after accused was warned of his rights, every effort, except physical violence, *and direct promise of reward*, or threats of physical

violence, was used to overcome the will of the accused and to induce or cause him to change the statement which he had made and to make some sort of admission that he was responsible for the death of Ollie Glass".

In the foregoing case the Florida Supreme Court held:

"* * * If the statements alleged to have been made by the defendant during the course of the examination of the officer prior to the time that he was taken out of the room where Ollie Glass died were *freely* and voluntarily made, then we labor under a misapprehension as to the meaning of the words".

We then see that the Florida Supreme Court has held that confessions must be freely and voluntarily made, that is without fear or *the hope of reward.*

In the *Chambers* case, *supra* the United States Supreme Court has held that confessions and the testimony of witnesses against an accused stand on the same basis.

The case of *Lamb* v. *State*, 91 Fla. 396, 107 So. 535, relied upon by the Supreme Court of Florida, did not involve false testimony procured by duress or force or the hope of reward. In the *Lamb* case, *supra*, the Court did say a Writ of Error *Coram Nobis* would be granted where a plea of guilty was entered because of fear of mob violence, quoting the case of *Nickels* v. *State*, 98 So. 497, 502, 99 So. 121, 86 Fla. 208, which case holds that a confession procured by fear is not freely and voluntarily made and is not admissible. We therefore see that the case of *Lamb* v. *State, supra,* relied upon by the Supreme Court of Florida does not discuss false testimony procured by force or duress or the hope of reward.

Ground (c). The Statement of law in this ground relied upon by the Supreme Court of Florida is a correct statement of the law but has no application to the case at bar

for the same reason that the statement of ground (a) is not applicable. Both Tyler and Baker testified falsely against the petitioner and under the same circumstances, and their testimony is the only testimony that implicates the petitioner with the crime. Without their testimony there could be no conviction.

Ground (d). Certainly the petitioner knew that Baker testified falsely at the trial. He also knew that Tyler testified falsely at the trial but he did not know why. Chambers knew that the other co-defendants testified against him, yet the Supreme Court of Florida granted a motion for leave to file a petition for Writ of Error *Coram Nobis. Chambers et al.* v. *State of Florida,* United States, *supra.*

Ground (e). The prosecuting officers in the case of *Chambers et al.* v. *State of Florida,* United States, *supra* had the same knowledge of the alleged mal-treatment of the witnesses as the prosecuting officers in the case at bar. In the *Chambers* case the prosecuting officers believed the defendants guilty the same as the prosecuting officers in the case at bar. The prosecuting officer, the State Attorney in the case at bar is the man who held out the hope of reward, in the case at bar.

Ground (f). The record shows that this ground is not founded on the facts alleged in the petition, which facts are not denied and are not refuted in the record of conviction. Furthermore a convict guard in the *Chambers* case, *supra,* was the person who inflicted the most mal-treatment on the accused was not an officer of the trial court. The State Attorney was the one who offered the reward.

Ground (g). This reason undoubtedly shows that the Supreme Court of Florida inadvertently overlooked the true facts. The petitioner's conviction and appeal is reported in 181 So. 354 and Baker's in 188 So. 634. The petitioner's

conviction was affirmed the 3rd day of February, 1938, Baker's conviction was affirmed March 14th, 1939, a severance was granted Baker, (Trial Record 726 to 730), which clearly shows that Baker was tried after the petitioner. Baker's affidavit (R. 13) states that he was not tried until after the petitioner Hysler was tried. There can be no escape from the fact that the Court was in error as to this ground.

Ground (h). In answer to this ground we say the record clearly shows that the only evidence to connect Hysler with the crime was the testimony of the witnesses Alvin Tyler and James Baker. The means used to get them to testify was the same invasion of the petitioner's rights as the means used in the *Chambers* case, United States, *supra.* The equal protection guaranteed to the petitioner under the 14th Amendment to the United States Constitution was invaded the same as was done in the *Chambers et al.* v. *State of Florida,* United States, *supra,* and was not discovered by the petitioner until long after his trial and conviction and was raised by him, properly so, when he applied to the Supreme Court of Florida for leave to file a petition for Writ of Error *Coram Nobis,* in the Circuit Court of Duval County, Florida. As it now stands it seems to us the petitioner's rights guaranteed to him under the 14th Amendment to the United States Constitution have been violated on the trial in the lower court. That is what he sought to show when he sought leave of the Supreme Court of Florida to apply to the lower court for Writ of Error *Coram Nobis,* the same as Chambers did.

ARGUMENT.

The petitioner's conviction was obtained solely upon false testimony extorted by violence and torture, by and hope of reward from officers and agents of the State of Florida while acting in their capacities, and is a denial of the equal protection and due process of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

In the discussion of this question of law we rely on the principles stated by this Court in the case of *Chambers* v. *State of Florida*, 60 Sup. Ct. 472, 309 U. S. 227. There was no denial of the facts stated in the motion for leave to file Writ of Error *Coram Nobis* in the Circuit Court of Duval County, Florida, for the purpose of the hearing before the Supreme Court of the State of Florida, so that the facts alleged in the motion must be taken as true. The refusal of the Supreme Court of Florida to permit the application to be made in the Circuit Court of Duval County, Florida, was final, and the petitioner was thereby prevented from pursuing his only remedy (*Lamb* v. *State*, 91 Fla. 396, 107 So. 535).

We have pointed out that the obtaining of confessions is looked upon in the same manner as the obtaining of the testimony of witnesses; all testimony must be freely and voluntarily given, and not false, springing from fear or the hope of reward.

The conclusion seems inevitable that the method of obtaining testimony herein under discussion and the subsequent conviction while the witnesses were still under the influence of the hope of reward, and who testified falsely, and its use in the sentencing of the petitioner herein, violate the fundamental principles of due process and have been repeatedly condemned by this Court as denying the protection guaranteed by the Constitution of the United States.

Conclusion.

Equal protection and due process under the law are the pillars upon which our democracy rests. A denial of these to the humblest of our citizens is a threat to the liberties of all. Lives and liberties must be taken only in accordance with those established modes of procedure which have been tried and tested by time. If the experience of our centuries of the common law has demonstrated that trial and conviction by honest testimony, openly arrived at, is better than and preferable to false testimony extorted by the Inquisition and the Star Chambers, without benefit of counsel, then it is respectfully submitted that the questions raised in this petition call for the exercise by this Court of its supervisory powers to the end that rights guaranteed under the Constitution of the United States and recognized by all civilized nations shall be preserved.

Respectfully submitted,

CLYDE HYSLER, *in Proper Person,*
Raiford, Florida,

CARLTON C. ARNOW,
203 Realty Building,
Jacksonville, Florida;

P. GUY CREWS,
203 Realty Building,
Jacksonville, Florida;
Attorneys for Petitioner.